

Appl.No.09/615,643

Response dated September 1, 2004

Reply to Office action of March 1, 2003

### REMARKS

This application was filed with 1-32 claims. Claim 20 has been previously canceled. Claims 19 and 21-31 have been previously withdrawn from consideration. Claims 1-18 and 32 have been rejected. Claims 1 and 32 have been amended. Therefore, Claims 1-18 and 32 are pending in the Application. Reconsideration of the application based on the remaining claims as amended and arguments submitted below is respectfully requested.

### Specification Rejections

The specification was objected to for failing to provide proper antecedent support for the claimed subject matter. Namely, correction in the specification for the terms "self-support, solid structure that will maintain rigid form before and after surgical implantation" is required. As such, Applicant has amended the specifications as requested.

The following is a rewritten version of the above added paragraph showing support from the original application as filed for the added text.

Since the present invention uses powdered bone to make solid shapes, (Page 4 line 12-13), the powdered bone tissue is compressed to make it denser, more compact, stronger and better able to bear force. (Page 5 lines 3-5) With the method of the present invention, many

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shapes and forms can be fabricated from allograft cortical bone tissue including pins, screws, plates, intervertebral discs, and the like for surgical implantation. (Page 5 lines 9-12) This current method overcomes prior art methods to provide an implant that has sufficient structural strength and density for fusion within the implanted body to take place after surgery. (Page 7 lines 8-10) As such, the current invention discloses a method of that makes surgically implantable, solid, self-supporting shapes, such as pins, screws, plates, intervertebral discs, and the like, that maintain structural strength after implementation.

Claim Rejections under 35 U.S.C. § 102

Claims 1, 9, 11, 12, 17, and 18 have been rejected under 35 U.S.C. §102(b) as being anticipated by Nelson et al (5824078) (Nelson). This rejection is respectfully traversed. Reconsideration and withdrawal thereof is requested.

In regard to claim 1, Claim 1 has been amended so that in addition to the previous steps the bone composite is hydrated with water. The cited prior art does not include all of these features.

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In regard to Claims 9, 11, 12, 17, and 18, Claims 9, 11, 12, 17, and 18 are dependent on Claim 1 and include features not anticipated by the prior art. As such, Claims 9, 11, 12, 17, and 18 are patentable.

Thus, Applicant respectfully requests that the rejection of Claims 1, 9, 11, 12, 17, and 18 under 35 U.S.C. §102(b) be withdrawn.

Claim Rejections - 35 U.S.C. §103

Claims 2-7 and 10 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Nelson in view of Dowd et al. Claim 13 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Nelson in view of Bonutti. Claims 8 and 32 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Nelson in view of Glimcher, et al. (Glimcher). Claims 14-16 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Nelson in view of McDonnell et al.

In regard to Claim 32, Claim 32 has been amended so that in addition to the previous steps the bone composite is hydrated with water. The cited prior art does not include all of these features. In fact, Glimcher specifically requires the absences of water. See Claim 9 and Column 6, lines 40-42

In regard to Claims 2-8, 10, and 13-16, Claims 2-8, 10, and 13-16 are dependent on Claim 1, and include features not anticipated by the prior art. As

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such, Claims 2-8, 10, and 13-16 are patentable. Thus, Applicant respectfully requests that the rejection of Claims 2-8, 10, 13-16 and 32 under 35 U.S.C. §103(a) be withdrawn

Applicant has commented on some of the distinctions between the cited references and the claims to facilitate a better understanding of the present invention. This discussion is not exhaustive of the facets of the invention, and Applicant hereby reserves the right to present additional distinctions as appropriate. Furthermore, while these remarks may employ shortened, more specific, or variant descriptions of some of the claim language, Applicant respectfully notes that these remarks are not to be used to create implied limitations in the claims and only the actual wording of the claims should be considered against these references.

The Commissioner is authorized to charge any deficiency or credit any overpayment associated with the filing of this Amendment and Response to Deposit Account 23-0035.

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Respectfully submitted,



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CERTIFICATE OF TRANSMISSION

I hereby certify that this Response and Amendment is being Transmitted via facsimile to:

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Art Unit 3738  
Examiner Brian E. Pellegrino  
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Date